IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7480 OF 2004

Uttam Prabhakar Kamble .... Petitioner
Vs.
Haribhau Sudam Ghone & others .... Respondents

Shri S.A. Sawant for the Petitioner.

Shri Dilip Bodke for the Respondents.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2004

P.C:

1. Heard the learned Advocates for the parties. Perused the records.

2. The petitioner challenges the order dated 8-7-2004 passed by the trial Court rejecting the application for appointment of the Commissioner. Undisputedly, the application for appointment of the Commissioner was filed by the petitioner with a view that the Commissioner should inspect the Plot Nos.133, 149 and 134 so as to bring on record the factual situation prevailing in those plots, including the number of persons occupying the said plots and the structures therein and in the manner it is being occupied. Undisputedly, the suit is for eviction of the petitioner and it is for the petitioner to establish his case and

in that regard the petitioner cannot seek the assistance of the trial Court to collect the evidence in support of his claim. The trial Court has rejected the application clearly observing that it is settled law that Commissioner cannot be appointed to collect evidence to assist one of the parties. Evidently, the application was to assist the petitioner to collect the evidence in support of his defence.

3. Attention was also sought to be drawn to the decision of the learned single Judge of this Court in the matter of **Madhukar R. Javle v. Baskar Ramnath Shibad,** reported in AIR 1996 Bombay 96. The said decision has no application to the facts of the case. That was in relation to the dispute as to whether the Court is empowered to direct inspection of the properties adjacent to the suit property. It was clearly observed that:-

> "... it is not possible to accept the contention of Mr. Jahagirdar that in exercise of the powers granted to the Court under the Code, the Court is precluded from directing inspection of some other property adjacent to the suit property ..... In my opinion, the scope of Rule 7(a) is wide enough to

> confer power on the Court to order inspection even in respect of properties, which are not the subject-matter of the suit ....."

The decision is not in relation to the powers of the Court to appoint Commissioner to assist one of the parties to the suit to collect evidence. It is well-settled law that powers for appointment of the Commissioner are not exercised to assist the parties to collect the evidence and considering the same, the trial Court having dismissed the application for appointment of the Commissioner, no fault can be found with the impugned order. As there is no case for interference in exercise of the writ jurisdiction under Article 227 of the Constitution in the impugned order, the petition is rejected.